

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

David M. O'Neil,

Plaintiff,

V.

Putnam Retail Management Limited Partnership,

Defendant.

CIVIL ACTION  
NO. 05-10469 WGY

## DEFENDANT'S MOTION TO DISMISS ALL COUNTS OF THE COMPLAINT

Defendant Putnam Retail Management Limited Partnership (“Putnam”) hereby moves this court to dismiss plaintiff’s Complaint in its entirety. As grounds for this Motion, Putnam states that:

1. Counts I, II, and III should be dismissed as barred by the statute of limitations set forth in 28 U.S.C. §1658;
2. Count IV should be dismissed as barred by the statute of limitations set forth in Mass. Gen. Laws ch. 260 §2; and
3. Alternatively, Count IV should be dismissed pursuant to Fed. R. Civ. P. Rule 12(b)(6) because plaintiff has failed to allege the required elements of an implied contract.

In support of this Motion, Putnam relies on its Memorandum of Law in Support of its Motion to Dismiss filed herewith and incorporated herein by reference.

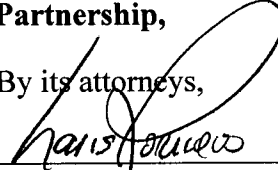
WHEREFORE, Putnam requests that its Motion to Dismiss be allowed and that plaintiff's Complaint be dismissed with prejudice in its entirety.

### REQUEST FOR ORAL ARGUMENT

Putnam requests an oral argument on its Motion to Dismiss pursuant to Local Rule 7.1(d).

**Putnam Retail Management Limited  
Partnership,**

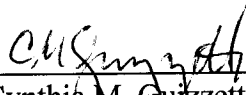
By its attorneys,

  
\_\_\_\_\_  
Louis A. Rodriques, BBO #424720  
Cynthia M. Guizzetti, BBO #653858  
**BINGHAM MCCUTCHEN LLP**  
150 Federal Street  
Boston, MA 02110-1726  
(617) 951-8000

Dated: May 10, 2005

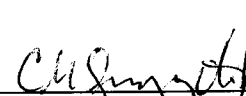
### CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by mail on May 10, 2005.

  
\_\_\_\_\_  
Cynthia M. Guizzetti

### CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I hereby certify that on May 6, 2005, Louis Rodriques and Cynthia Guizzetti, counsel for the defendant, and Jody Newman, counsel for the plaintiff, conferred and attempted in good faith to resolved or narrow the issues presented herein.

  
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Cynthia M. Guizzetti